IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14623 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HABIBURRAHEMAN ABDULLABHAI LODHIWALA

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 14623 of 2004

MR MTM HAKIM for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

MR SK PATEL for Respondent No. 4-8

NOTICE SERVED BY DS for Respondent No. 9

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 11/01/2005

ORAL JUDGEMENT

Rule. Shri K.P.Raval, Learned AGP waives service

of rule on behalf of the respondent no.1, 2 and 3. Shri Manish J Patel appearing for Shri S.K.Patel, Learned Advocate for the respondent no.3 to 9. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Collector, Sabarkantha dated 25.9.2004 by which the allotment in favour of the petitioner with regard to the land in question is canceled, the application of the petitioner is filed and the petitioner is directed to make a fresh application for other land.

3. It appears from the record that the petitioner who is a government employee has submitted an application on 4.1.1994 for allotment of certain land for the residential purpose as a government employee from the land of the Gam Thal of Village Motipura, Taluka Himmatnagar admeasuring 185.50 sq.mtrs. of land. It appears that the said application was granted and the petitioner has also paid the entire amount. It appears that subsequently and/or in the meantime, certain village people have objected to the grant of land to the petitioner and accordingly, the Collector, Sabarkantha by order dated 29.10.2004 passed the impugned order cancelling the grant in favour of the petitioner which has given rise to the present petition.

4. Shri MTM Hakim, Learned Advocate appearing for the petitioner has submitted that apart from the fact that there are no valid reasons and/or objections by the village people to object grant of land in favour of the petitioner but the impugned order dated 25.9.2004 is passed without giving an opportunity to the petitioner and is in breach of principles of natural justice. Considering the fact that the impugned order dated 25.9.2004 is in breach of principles of natural justice without going into the merits with regard to the reasons for cancellation of the land and only on that ground, the present petition succeeds and the impugned order dated 25.9.2004 passed by the Collector, Sabarkantha in cancelling the grant in favour of the petitioner is hereby quashed and set aside. It will be open for the Collector to pass appropriate order in accordance with law and on merits after giving an opportunity to all the concerned parties. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(M.R.Shah, J)

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